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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,333	03/26/2004	Nelson G. Bingel III	31518.0ncw	1590
26712 7590 06/14/2007 HODGSON RUSS LLP THE GUARANTY BUILDING 140 PEARL STREET SUITE 100 BUFFALO, NY 14202-4040			EXAMINER LAUX, JESSICA L	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 06/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,333

Applicant(s)

BINGEL ET AL.

Examiner

Jessica Laux

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The final rejection of 04/19/2007 has been vacated/withdrawn in view of the newly discovered prior art to Baatz and Ochoa. The examiner apologizes for the inconvenience. A new non-final office action appears below based on the newly discovered art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz (5575966) in view of Ochoa (20030085394).

Claim 7: Baatz discloses a truss capable of reinforcing a pole, the truss comprising:

an elongated body having a pair of opposite ends connected by a pair of longitudinal edges;

the body having an open cross-sectional configuration characterized by a pair of diverging side flanges (6,7) each extending from a respective one of the longitudinal edges, and

an intermediate section connecting the pair of side flanges, wherein the intermediate section of the cross-sectional configuration includes:

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a pair of bridge portions (3) associated one with each of the pair of side flanges, each bridge portion extending in a direction forming an obtuse angle with the direction of the associated flange; and

a pair of apex portions (figure 1 on the right) associated one with each of the pair of bridge portions, each apex portion extending in a direction forming an obtuse angle with the direction of the associated bridge portion, wherein the pair of apex portions converge toward one another..

Baatz does not disclose that fastener holes are provided through each of the pair of apex portions. Ochoa discloses a truss capable of reinforcing a pole having the side flanges, bridge portions and apex portions, and fastener holes (38) are provided through each of the pair of apex portions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the truss of Baatz to have the fastener holes as taught by Ochoa for securing the truss to a post.

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baatz (5575966).

Claims 11-12: Baatz discloses a truss for reinforcing a pole, the truss comprising:

an elongated body having a pair of opposite ends connected by a pair of longitudinal edges; the body having an open cross-sectional configuration characterized by:

a pair of straight apex portions (figure 1, the right side) forming an excluded angle A1 (generally at 5 of figure 1) with one another;

a pair of straight bridge portions (3, figure 2) each forming a first included angle A3 with an associated one of the pair of apex portions;

a pair of straight side flanges (7, figure 2) each forming a second included angle A2 with an associated one of the pair of bridge portions;

Baatz doesn't expressly disclose the angle values, however the truss of Baatz and applicant's truss are structural equivalents and it appears from the figures of Baatz that the angles satisfy the claimed relationship:

wherein the angles A1, A2, and A3 are chosen to satisfy the following relationship: $180 - A2 - A3 + \frac{1}{2}A1 > 0$ in which angles A1, A2, and A3 are expressed in degrees.

Further Baatz does not expressly disclose that the excluded angle A1, the first included angle A3, and the second included angle A2 are equal to one another or are equal to 100 degrees, however applicant has stated in the specification that any angles satisfying the above equation are acceptable and applicant has not disclosed that the claimed 100 degrees solves any stated problem or is for any particular purpose, therefore it would have been a mere matter of design choice to have the angles be 100 degrees as the specification discloses any angles satisfying the equation are acceptable.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-

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8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



/J. CHAPMAN/
PRIMARY EXAMINER
ART UNIT 3635

JL
06/11/2007